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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**FEDERAL DEPOSIT INSURANCE  
CORPORATION. as Receiver for  
Indymac Bank, F.S.B.,**

**Plaintiff,**

**v.**

**FIDELITY NATIONAL TITLE  
INSURANCE., et al.**

**Defendant.**

**CASE NO. SACV 10-0627 DOC  
(RBNx)**

**O R D E R DENYING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT**

Before the Court is a Motion for Default Judgment ("Motion") filed by Third Party Plaintiff Fidelity National Title Insurance Company. (Dkt. 104). After considering the moving papers and oral argument, the Court DENIES Third Party Plaintiff's Motion. The Court schedules a hearing for a Second Motion for Default Judgment for 8:30 a.m. on May 14, 2012.

**I. Background**

On November 1, 2010, Third Party Plaintiff Fidelity National Title Insurance Company ("Third Party Plaintiff") filed a Third Party Complaint against Third Party Defendants Amin Razi, Hamid Khorramnezhad, and Max Kay (collectively, "Third Party Defendants"),

1 and others. *See* Third Party Compl. (Dkt. 38). Third Party Plaintiff brought this action against  
 2 Third Party Defendants seeking to recover the \$250,000 that Third Party Plaintiff paid Federal  
 3 Deposit Insurance Corporation to settle claims between it and Third Party Plaintiff. *See id.*; Mot.  
 4 at 1.

#### 5 **A. Third Party Plaintiff's settlement with FDIC**

6 Federal Deposit Insurance Corporation ("FDIC") filed its first amended complaint on  
 7 June 28, 2010, alleging that Third Party Plaintiff breached the lender's closing instructions for  
 8 the purchase and sale of certain real property ("Calvert Property") by failing to disclose to the  
 9 lender: (1) that the purchase and sale of the Calvert property was a fraudulent property flipping  
 10 scheme involving double escrow; and (2) that "Razi had assumed over \$1 million in other  
 11 mortgage loans" less than two months before the lender issued the loan to Razi secured by the  
 12 Calvert Property. *See* Mot. at 1. FDIC also alleged that the lender would not have funded the  
 13 two mortgage loans to Razi totaling \$669,750.00 and would not have suffered  
 14 damages when Razi defaulted on the loans had the lender been aware of the alleged  
 15 fraud and Razi's other mortgages. *Id.*

16 On September 20, 2011, Third Party Plaintiff entered into a settlement agreement  
 17 with FDIC, the terms of which required that Third Party Plaintiff to pay \$250,000.00 to FDIC  
 18 for the losses sustained by FDIC in relation to the two mortgage loans totaling \$669,750.00  
 19 (Hutchison Decl. ¶11; Saalfield Decl. ¶ 6).

#### 20 **B. Third Party Plaintiff's Action Against Third Party Defendants**

21 On November 1, 2010, Third Party Plaintiff filed a Third Party Complaint against the  
 22 Third Party Defendants and others. *See* Third Party Compl. (Dkt. 38). The Third Party  
 23 Complaint "denied . . . any wrongdoing by" Third Party Plaintiff, but sought damages from the  
 24 Third Party Defendants "to the extent that [Third Party Plaintiff] is . . . held liable to" FDIC. *Id.*  
 25 at ¶ 14.

26 The Third Party Complaint is remarkably short on facts, appearing to allege only that  
 27 FDIC's "damages, if any, were caused by the fraudulent, tortious or otherwise unlawful conduct  
 28 of third party defendants Razi, Khorramnezhad, and Kay." *Id.* Based on these minimal

allegations, the Third Party Complaint brings four causes of action against the Third Party Defendants: (1) total equitable indemnity; (2) partial equitable indemnity; (3) contribution and repayment; and (4) a declaration of the parties' respective rights and duties." *See id.* at ¶ 16-18, 19-22, 23-25, 26-28.

### C. Plaintiff's Motion for Default Judgment

On February 23, 2012, Third Party Plaintiff filed the present Motion for Default Judgment. (Dkt. 104). The present Motion alleges that Third Party Plaintiff suffered damages of \$250,000.00, that is, the total amount that the Third Party Plaintiff paid in its settlement with FDIC. *See Mot.* at 1. The Motion contains states that the Third Party Plaintiff's "[s]ubstantive [c]laims are [m]eritorious and its Third Party Complaint is [s]ufficient," but does not contain additional evidence of Third Party Defendants' conduct nor advance a legal argument as to the basis for liability. *See id.* at 5:1-10.

### II. Legal Standard

Federal Rule of Civil Procedure 55 provides that the Court may, in its discretion, order default judgment following the entry of default by the Clerk. Fed. R. Civ. P. 55(b). Local Rule 55 sets forth procedural requirements that must be satisfied by a party moving for default judgment. Upon entry of default, the well-pleaded allegations of the complaint are taken as true, with the exception of allegations concerning the amount of damages. *See, e.g., Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). However, "necessary facts not contained in the pleading, and claims which are legally insufficient, are not established by default." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992). Where the pleadings are insufficient, the Court may require the moving party to produce evidence in support of the motion for default judgment. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). A court may not enter a default judgment against an unrepresented minor, incompetent person, or person in military service. Fed. R. Civ. P. 55(b)(2); 50 App. U.S.C. § 520.

When a party applies for default judgment, "the court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when, to enter or effectuate

1 judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C)  
 2 establish the truth of any allegation by evidence; or (D) investigate any other matter.” Fed. R.  
 3 Civ. P. 55(b)(2).

### 4 **III. Discussion**

#### 5 **A. The Claims Are Insufficient As Pled**

6 “[N]ecessary facts not contained in the pleading, and claims which are legally  
 7 insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261,  
 8 1267 (9th Cir. 1992).

9 Third Party Plaintiff has not sufficiently established any of its claims against Third Party  
 10 Defendant. The Third Party Complaint is remarkably short on facts, appearing to allege only  
 11 that FDIC’s “damages, if any, were caused by the fraudulent, tortious or otherwise unlawful  
 12 conduct of third party defendants Razi, Khorramnezhad, and Kay.” *See* Third Party Complaint  
 13 at ¶ 14. From this pleading, it is not clear what the Third Party Defendants did, nor how they  
 14 caused the Third Party Plaintiff to become liable to FDIC.

15 However, a Court may allow the moving party to produce evidence in support of the  
 16 motion for default judgment. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th  
 17 Cir. 1987). Accordingly, at the end of this Order, the Court provides the Third Party Plaintiff  
 18 with an opportunity to supplement its Motion.

19 Because the claims are currently insufficient as pled, the Court does not reach the other  
 20 requirements of a default judgment, namely, whether the procedural requirements are met and  
 21 the *Eitel* factors militate in favor of a default judgment.

#### 22 **B. The Third Party Plaintiff has not demonstrated why it would be** 23 **entitled to attorney’s fees and costs**

24 The Motion seeks attorney’s fees of \$62,051.67. Mot. at 5:8. The Motion offers no  
 25 explanation as to why the Court should depart from the Local Rule 55-3, which imposes a  
 26 ceiling on fee recovery.  
 27  
 28

1  
2 **IV. Disposition**


3 For the foregoing reasons, Plaintiffs' Motion for a Default Judgment is DENIED  
4 WITHOUT PREJUDICE. If Third Party Plaintiff desires a default judgment, it must file a  
5 Second Motion for Default Judgment of no more than 25 pages, not including attachments, by  
6 7:30 a.m. on April 10, 2012. The Second Motion for Default Judgment shall address all the  
7 requirements of a motion for default judgment, including the following:

- 8 1) The elements of each cause of action for which Third Party Plaintiff seeks a default  
9 judgment;  
10 2) The facts which establish each element within each cause of action;  
11 3) Admissible evidence supporting the conclusion that those facts are true;  
12 4) A legal argument as to why the Court should depart from Local Rule 55-3.

13  
14 The Court schedules a hearing on this Second Motion for Default Judgment for 8:30 a.m.  
15 on May 14, 2012. The Court warns Third Party Plaintiff that if Second Motion for Default  
16 Judgment does not cure the defects in the present motion, the Court will deny the Second Motion  
17 WITH PREJUDICE.

18 IT IS SO ORDERED.

19 DATED: March 26, 2012

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22 DAVID O. CARTER  
23 United States District Judge  
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